

IN THE CIRCUIT COURT FOR EIGHTEENTH JUDICIAL DISTRICT
DuPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN, Attorney)
General of the State Illinois,)
and ex rel. JOSEPH E. BIRKETT,)
State's Attorney for DuPage County,)
Plaintiff,)

v.)

THE LOCKFORMER COMPANY, a)
Division of MET-COIL SYSTEMS)
CORPORATION, a Delaware Corporation;)
and HONEYWELL INTERNATIONAL, INC.,)
a Delaware Corporation,)
Defendants.)

0000011

EPA Region 5 Records Ctr.



235066

No. 01 CH 62

AGREED ORDER FOR IMMEDIATE AND PRELIMINARY INJUNCTION
WITH DEFENDANT LOCKFORMER

This cause coming before the Court on Plaintiff's Motion for Immediate and Preliminary Injunction, the parties being represented in open court, and the Court being advised in the premises,

NOW, THEREFORE, the Plaintiff having alleged that there exists a substantial danger to the environment or to the health or welfare of persons pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2000), and Lockformer denying responsibility therefore, and the parties having agreed to the entry of this Preliminary Injunction, the Court enters the following Preliminary Injunction which shall remain in effect until further order by this Court:

1. Finding Defendant Lockformer is a division of Met-Coil Systems Corporation, a Delaware Corporation, which owns and operates a facility located at 711 West Ogden Avenue, Lisle, County of DuPage, Illinois ("Facility" or "Site").

2. Finding Defendant Honeywell International Inc. ("Honeywell") f/k/a AlliedSignal (Allied"), is and was a Delaware corporation. Honeywell f/k/a Allied supplied Lockformer with trichloroethylene ("TCE") for use as a degreaser in connection with metal fabrication processes at Lockformer's Facility.

3. Finding Plaintiff alleges that Defendants, by their actions, have created circumstances of substantial danger to the environment or to the public health or welfare, in direct contravention of the requirements of the Act and the Board Regulations. Plaintiff alleges that Defendants have caused, threatened, or allowed TCE contamination in the vicinity of the Facility, which is the source of TCE contamination found in nearby drinking water wells. Defendant Lockformer denies responsibility for the TCE contamination found in the nearby drinking water wells.

4. Finding nothing contained herein shall be deemed as an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by Defendants nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint.

5. Finding that Lockformer has retained a professional engineer and a professional geologist, licensed in the State of Illinois and approved by the State, to conduct a Comprehensive Volatile Organic Compounds ("VOC") Investigation to investigate and delineate the nature and extent of the contamination caused by the TCE spills at the Site.

The Court Hereby Orders that:

6. Effective January 19, 2001, Lockformer shall provide potable bottled water, or reimburse all reasonable costs for alternative

drinking water, to all residences not on public water supply located on the north and south sides of Front Street, Reidy Road, Hitchcock Avenue, and Gamble Drive. This area will be bound to the west by Kingston Avenue and will include any homes on the east side of Kingston Avenue and bounded to the east by Westview Lane including any homes on the east side of Westview Lane. Water provisions or reimbursement shall continue until such further order of the court or written agreement by the parties.

7. Within five (5) days of the entry of this Agreed Order, Lockformer shall disclose or make available to Plaintiff any and all information in its possession relating to other potential or actual sources of VOC and/or TCE in the private wells in the vicinity of the Lockformer Site.

8. Within seven (7) days of the date of entry of this Agreed Order, Lockformer shall disclose all usage of VOC other than TCE at the Lockformer Facility from 1990 to the present date, in their possession. Lockformer shall also provide a list of hazardous waste manifests for disposal of spent or waste solvents from 1990 to the present date, in their possession. Lockformer shall provide detailed engineering data on the design of the degreaser and concrete vault in their possession.

9. All submittals and correspondence required by this Order shall be directed to the following persons:

Mr. Donald Gimbel
Illinois Environmental Protection Agency
9511 West Harrison St.
Des Plaines, IL 60016
FAX 847-294-4058

Mr. Stanley Komperda (6 copies)
Illinois EPA #24
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Ms. Kendra Pohn
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
FAX 312-814-2347

Mr. Howard O. Chinn
Chief Engineer
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
FAX 312-814-2347

Ms. Deborah Smith
Assistant State's Attorney for DuPage County
505 North County Farm Road
Wheaton, Illinois 60187
FAX 630-682-7048

Mr. Daniel J. Biederman (2 copies)
Chuhak & Tecson
225 West Washington Street, Suite 1300
Chicago, IL 60606-3418
FAX 312-444-9027

10. Within fourteen (14) days of the entry of this Agreed Order, Lockformer shall submit a Comprehensive VOC Investigation Work Plan ("Work Plan") including timetables. The Work Plan shall include, but not be limited to, the installation of eight on and off-site monitoring well clusters. Each well cluster shall consist of a shallow (upper aquifer) and deep (bedrock) monitoring well. The monitoring wells shall assist in determining the rate and flow of groundwater and extent of contamination. The Work Plan shall also include a pump test of the lower aquifer utilizing the on-site production well. Wells screened in the upper and lower aquifer shall be monitored during the pump test for changes in groundwater elevation. One angle hole boring shall be drilled into bedrock and an

assessment of bedrock master point characteristics shall be performed or Lockformer shall suggest an alternative technique, subject to review and approval of the State, to determine bedrock fracture characteristics.

11. Within fourteen (14) days of the State's approval of the Work Plan, Lockformer shall commence the Comprehensive VOC Investigation in accordance with timetables approved therein. Notwithstanding revisions and discussions with the State, if no approval is obtained from the State, the State retains the right to begin the necessary work on or about March 5, 2001, and reserves the right to pursue recovery of any costs of performing such necessary work.

12. Within seven (7) days of completion of the Comprehensive VOC Investigation, Lockformer shall prepare and submit a Comprehensive VOC Investigation Report to the State for review. Review shall determine whether the investigation and report fully determines the nature and extent of the on and off site contamination. The Comprehensive VOC Investigation Report shall include, but not be limited to:

- A) Executive summary. This shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state whether recognized environmental conditions were identified and the data limitations in the assessment;
- B) Site characterization. This shall include the compilation of all sources reviewed and information obtained as a result of the investigation including existing information from previous studies and including but not limited to:
 - 1) Sources consulted or reviewed. This shall contain a list of reference documents used in completing the investigation;
 - 2) Site history. This shall present a chronological summary of the historic uses of the remediation site as prescribed by "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-94);

- 3) Area of Impact description and mapping of the soil and groundwater plumes. This shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, existing and potential migration pathways and exposure routes, and current and post-remediation uses of the impacted and surrounding areas. Information from the State Geological Survey and private and public well information should be incorporated.
 - 4) Site base maps of sufficient detail and accuracy to show all of the following:
 - a) A distance of at least 2,000 feet around the impacted area at a scale no smaller than one inch equal to 200 feet;
 - b) Map scale, north arrow orientation, date, and location of the site with respect to township, range and section;
 - c) Site boundary lines, with property adjacent to the impacted area clearly indicated, if reasonably identifiable;
 - d) Surrounding land uses;
 - e) Sources or potential sources of contaminants of concern, spill areas, and other suspected areas for any or all contaminants of concern;
 - f) On-site and off-site withdrawal wells including past wells believed to have been abandoned; and
 - g) All buildings, tanks, piles, utilities, paved areas, easements, right-of-ways and other features, including all known past and current product and waste underground tanks or piping.
 - 5) A legal description or reference to a plat showing the boundaries of the remediation site;
- C) Comprehensive sampling plan. This shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydro geological investigations, surface water investigations, and potential receptor investigations;
- D) Documentation of field activities. This shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
- 1) Narrative description of the field activities conducted during the investigation;

- 2) The quality assurance project plan utilized to document all monitoring procedures performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
 - 3) Presentation of the data in an appropriate format such that all the information is organized and presented logically and that the relationships between the different investigations for each medium are apparent.
- E) Endangerment Assessment. This shall analyze the results of the field activities and characterize the extent of contamination, quantitative and qualitative, for contaminants of concern and compare the impacted area information with applicable provisions of 35 Ill. Admin. Code 742. This chapter shall:
- 1) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Admin. Code 742;
 - 2) Describe and map the nature, concentration, and extent of contaminants of concern within all environmental media and assess the observed and potential contaminant fate and transport;
 - 3) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport risk to human health, safety, and the environment; and
 - 4) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 soil and groundwater remediation objectives under 35 Ill. Admin. Code 742;
- F) Conclusion. This shall assess the sufficiency of the data in the report and recommend future steps;
- G) Appendices. References and data sources, including but not limited to field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices; and

13. Within fourteen (14) days of receipt of the State's written determination that the results of the Comprehensive VOC Investigation Report fully determine the nature and extent of contamination, Lockformer shall develop remediation objectives for remediation of soil, groundwater and surface water contamination, both on Site and

off Site, which is attributable to the Defendants, and submit a Remediation Objectives Report.

14. Within fourteen (14) days of receipt of the State's written approval of the Remediation Objectives Report, Lockformer shall submit to the State a Remedial Action Plan, for remediation of soil, groundwater and surface water contamination, both on Site and off Site, which is attributable to the Defendants. The Remedial Action Plan shall include a timetable for its implementation.

15. The State shall review and comment on the Remedial Action Plan. Lockformer shall make changes, if any, necessitated by such review. Upon written approval by the State of the Remedial Action Plan, Lockformer shall implement it according to its terms, within the time period approved by the State.

16. If the State rejects any of the documents or reports described above, within fourteen (14) days of the receipt of the rejection letter, Lockformer shall submit a modified document to satisfy the State's comments.

17. Within fourteen (14) days of completion of the activities required by the Remedial Action Plan, Lockformer shall submit to the State a Remediation Completion Report that complies with the format of 35 Ill. Adm. Code 740.455. Upon receipt of the Remediation Completion Report, the State shall review and either approve or reject it. The State reserves the right to reject the Remediation Completion Report if Lockformer has failed to implement the Remediation Plan previously approved by the State, or if the remediation objectives established in the approved Remediation Action Plan have not been met.

18. If the State rejects the Remediation Completion Report, Lockformer shall, within fourteen (14) days after receiving such

rejection notification from the State, perform to completion additional corrective action as necessary to satisfy the State's comments.

19. All Site remediation activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer ("LPE") and Licensed Professional Geologist ("LPG") licensed and in good standing in Illinois. All plans and reports submitted by Lockformer for review and evaluation shall be prepared by or under the supervision of an LPE or LPG.

20. Lockformer shall pay all reasonable past costs incurred by the Illinois EPA pursuant to the Review and Evaluation Services Agreement executed by Lockformer and the Illinois EPA on August 18, 1998, in accordance with 35 Ill. Adm. Code Part 740. The State reserves the right to pursue recovery of any other costs of investigation and pursuit of this matter.

21. If Lockformer fails to meet any deadline contained herein or fails to timely provide any information referenced herein, (subject to an extension of time granted by Plaintiff's written determination or granted by Court Order), Lockformer shall pay a stipulated penalty of two thousand dollars (\$2,000.00) per day until such time as Lockformer has satisfied the requirement contained herein. Stipulated penalties shall continue to run during the pendency of any dispute resolution process, but shall not attach if Lockformer prevails in dispute resolution. Payment shall be made by certified check or money order, made payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

22. Any failure by Lockformer to comply with any requirements of this Agreed Order shall not be a violation of this Agreed Order if such failure is the result of action(s) by persons or events beyond the reasonable control of Lockformer including, but not limited to, acts of God, act of public enemy, war, blockade, public riot, fire, flood or labor dispute. Disputes relative to compensation payable to agents, employees, or servants, or increased costs shall not be considered circumstances beyond the control of Lockformer.

23. The parties shall use their best efforts to resolve all disputes or differences of opinion arising with regard to this Agreed Order, informally and in good faith. If however, disputes arise concerning this Agreed Order which the parties are unable to resolve informally, either party may, by written motion, request that an evidentiary hearing be held before the DuPage County Circuit Court, to resolve the dispute between the parties.

24. The parties may, by mutual consent, extend any compliance dates under this Agreed Interim Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Agreed Interim Order by reference.

25. Lockformer asserts there has been no spilling at the Site for a number of years. Nonetheless, Lockformer shall cease and desist from causing or allowing any spilling of TCE at the Facility.

26. In addition to any other authority, the Illinois EPA, its employees and representatives and the Attorney General, his agents and

representatives, and the DuPage County State's Attorney, his agents and representatives, shall have the right of entry into and upon Lockformer facility which is the subject of this Agreed Order, at all reasonable times for the purposes of carrying out inspections. Plaintiff agrees to comply with the safety regulations in effect at the Facility at the time of inspection. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, and the DuPage County State's Attorney, his agents and representatives, may take photographs, samples, and collect information, as they deem necessary. Plaintiff shall provide upon Defendant's request duplicate photos, if any photos are taken in the course of inspection. For any photographs taken or information collected during said inspections, Lockformer may make whatever claims as are allowed under Section 7 of the Act, 415 ILCS 5/7 (2000) or the Illinois EPA regulations regarding access to Illinois EPA records at 2 Ill. Adm. Code 1828.

27. This Agreed Order for Immediate and Preliminary Injunction is not a final resolution on the merits of the Plaintiff's Complaint filed herein, but rather addresses the Plaintiff's immediate concerns regarding the releases alleged in the Complaint.

28. THIS MATTER is set for further status on _____,
2001.

ENTERED: _____
JUDGE

DATED: _____

AGREED:
For Defendant
THE LOCKFORMER COMPANY

BY:  ROSEMARIE CAZEAU

TITLE: Vice President

For Illinois Attorney General

BY: ROSEMARIE CAZEAU, Chief
Environmental Bureau

For the Illinois EPA

BY: JOSEPH E. SVOBODA,
Chief Legal Counsel

For DuPage County State's Attorney
JOSEPH E. BIRKETT
State's Attorney
DuPage County, Illinois

BY: JOSEPH E. BIRKETT
DuPage County State's Attorney
505 North County Farm Road
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Of Counsel:

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(630) 682-7056

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28. THIS MATTER is set for further status on _____,
2001.

ENTERED

ENTERED: _____
JUDGE

JAN 22 2001

DATED: _____
ROBERT E. BYRNE, JUDGE

AGREED:

For Defendant
THE LOCKFORMER COMPANY

BY: _____

TITLE: _____

For Illinois Attorney General

BY:

Rosemarie Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau

For the Illinois EPA

BY:

Joseph E. Svobeda / R. Cazeau
JOSEPH E. SVOBODA,
Chief Legal Counsel

For DuPage County State's Attorney

JOSEPH E. BIRKETT

State's Attorney

DuPage County, Illinois

BY:

Joseph E. Birkett
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